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## CORRESPONDENCE.

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*Acknowledgments or Affidavits Over Telephone.*

Editor Virginia Law Register:

In the July issue of the Register I called attention to the danger of "marginal releases." Expressions of interest in that subject coming to me from a number of your subscribers encourage the idea of pointing out another practice which is perilous in the extreme. I refer to the habit of taking affidavits or acknowledgments over the telephone. This mode of procedure is wonderfully convenient, and sometimes the temptation to adopt it well nigh irresistible; but in law transactions based upon certificates so made are *null and void*. Not only so. The courts seem to look upon such conduct on the officer's part as nothing less than *immoral*. For instance, in the case of *Re Napolis*, 155 N. Y. Sup. 416, an attorney was severely censured for taking an affidavit by 'phone. The court in the course of its opinion uses this very strong language:

"Of course, such a method of administering an oath is entirely illegal and unauthorized, and respondent, in acting as he did, was guilty of a misdemeanor. \* \* \* The offense is a serious one and receives the severe condemnation of the court \* \* \* The court again wishes to express its condemnation of the acts of notaries in taking acknowledgments or affidavits without the presence of the party whose acknowledgment is taken, or the affiant, and that it will treat as serious professional misconduct the act of any notary thus violating his official duty."

The latest decision on this subject is one by the Idaho Supreme Court, holding that—

"Where the personal presence of a party before an officer is a requirement of the statute, an acknowledgment made by a person not in the presence of the officer, by means of the telephone, is void." *Charles S. Myers v. Mary A. Eby*, 193. Pac. 77.

The Idaho statute referred to is substantially the same as ours. The Myers case will be found reported with annotation in 12 A. L. R., 535.

A. W. PATTERSON.

Richmond, Va.,

Aug. 19, 1921.